

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S RESPONSE TO MOTION
OF TEXAS FARM BUREAU, TEXAS CATTLE FEEDERS ASSOCIATION, TEXAS
PORK PRODUCERS ASSOCIATION AND TEXAS ASSOCIATION OF DAIRYMEN
TO FILE BRIEF AS *AMICUS CURIAE***

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), hereby submits this response in opposition to the Motion of the Texas Farm Bureau, Texas Cattle Feeders Association, Texas Pork Producers Association, and Texas Association of Dairymen ("Texas Movants") to File Brief as *Amicus Curiae* in opposition to the Plaintiff's Motion for Preliminary Injunction [DKT #1514] ("*Amicus Motion*"). Because the subject of the Texas Movants' proposed *amicus* brief would not be analytically useful to the Court and, thus, is contrary to principles governing *amicus curiae* participation, the *Amicus Motion* should be denied.

I. The Texas Movants' *Amicus Motion* should be denied because the subject of their proposed *amicus* brief would not be useful to the Court's consideration of the State's Motion for Preliminary Injunction

The principles governing the grant to participate as *amicus curiae* are well-settled.

"There is no inherent right to file an *amicus curiae* brief with the Court. It is left entirely to the

discretion of the Court." *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999); *Fluor Corp. & Affiliates v. United States*, 35 Fed. Cl. 284, 285 (1996); *Waste Management of Pennsylvania, Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995). "A court may grant leave to appear *amicus curiae* if it deems the proffered information timely and useful." *Hawksbill Sea Turtle v. FEMA*, 11 F. Supp. 2d 529, 541 (D.V.I. 1998), quoting *Liberty Lincoln Mercury v. Ford Marketing Corp.*, 149 F.R.D. 65, 82 (D.N.J. 1993).

Furthermore, unnecessary *amicus* submissions have been criticized as imposing a "real burden on the court system," "impos[ing] a burden of study and the preparation of a possible response on the parties," "more often than not sponsored or encouraged by one or more of the parties," possibly "intended to circumvent the page limitations on the parties' briefs," and "attempts to inject interest-group politics into the federal appellate process by flaunting the interest of a trade association or other interest group in the outcome." *National Organization for Women, Inc. v. Scheidler*, 223 F.3d 615, 616-17 (7th Cir. 2000).

The Texas Movants' *Amicus* Motion contravenes these principles because the proposed *amicus* brief lacks utility inasmuch as it fails to address facts or legal principles that are relevant to the Court's consideration of the State's motion for a preliminary injunction. In this regard, participation as *amicus curiae* is not permitted where the proposed submission is not useful to the Court. See *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1271, 1274 (D.N.M. 2002) (denying leave to file *amicus* brief for lack of utility); *Long*, 49 F. Supp. 2d at 1177-78 (same); *Hawksbill Sea Turtle*, 11 F. Supp. 2d at 541 (denying leave because proposed *amicus* submission "lack[ed] utility since it does not directly address the facts or law at issue in this case").

Here, the Texas Movants' proposed *amicus* brief does nothing to illuminate any issue that is appropriate for the Court's consideration of the State's motion for a preliminary injunction. In fact, the proposed *amicus* brief has a number of features demonstrating its lack of utility.

First, the Texas Movants apparently seek *amicus* participation only to make a political statement protesting this lawsuit because it seeks judicial enforcement of applicable environmental laws. The Court has already, however, resolved issues of concerning primary jurisdiction and concluded that the courthouse is an appropriate forum to adjudicate the State's claims. *See* Court's 7/5/07 Order [DKT #1206] (denying motion to dismiss based on primary jurisdiction).

Second, the Texas Movants' vague recitation of what is or is not required in Texas (*e.g.*, how manure is defined under Texas law) is irrelevant to the Court's adjudication of the State's claim under RCRA. *See* Texas Movants' proposed brief [DKT #1514-2], p. 3.

Third, the Texas Movants' political observations concerning the *City of Waco* litigation are also irrelevant to the State's pending injunction motion. Therefore, such assertions do not support the grant of *amicus* participation. *See* Texas Movants' proposed brief [DKT #1514-2], pp. 3–6.

Fourth, the vast majority of the statements made in the Texas Movants' proposed *amicus* brief are made entirely without any citation to either the record or any legal or other authority.

Fifth, to the extent the Texas Movants suggest that the State's requested injunction should be denied because its impact will be felt outside Oklahoma, such statements are made in summary fashion, are based purely on speculation, and are in any event irrelevant. *See, e.g.*, State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 17-18.

Finally, the *Amicus* Motion should be denied because the proposed brief demonstrates the Texas Movants' lack of familiarity with fundamental aspects of the State's pending Motion for Preliminary Injunction. For example, they attempt to argue in their proposed brief that this Court should not grant injunctive relief because "[t]he State of Texas does not consider manure to be a hazardous waste." See Texas Movants' proposed brief [DKT #1514-2], p. 3 (emphasis added). This misses the mark because the State's Motion for Preliminary Injunction is based on poultry waste constituting "solid waste" under RCRA. Further, the Texas Movants improperly refer to this lawsuit as a "class action," which is, of course, incorrect. See Texas Movants' proposed brief [DKT #1514-2], pp. 3, 6, 9.

In sum, the Texas Movants cannot satisfy the utility requirement of *amicus* participation, and their *Amicus* Motion should be denied.

II. Conclusion

For the foregoing reasons, the Motion of the Texas Farm Bureau, Texas Cattle Feeders Association, Texas Pork Producers Association, and Texas Association of Dairymen to File a Brief as *Amicus Curiae* [DKT #1514], should be denied.

Respectfully Submitted,

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I hereby certify that on this 18th day of February, 2008, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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